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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/108,189	07/01/1998	HOWARD TANNER	23660-00611	9021

25243 7590 06/06/2005

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EXAMINER

HAN, MARK K

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/108,189

Applicant(s)

TANNER ET AL.

Examiner

Mark K. Han

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104-109, 115 and 120-135 is/are pending in the application.
- 4a) Of the above claim(s) 104-109 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 115 and 120-135 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2000 and 01 July 1998 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the withdrawal of claims 132-135 in the reply filed on 09 August 2004 is acknowledged. The traversal is on the ground(s) that the subject matter of these claims would not require a separate field of search than that already conducted. This is found to be persuasive. It has been found that a search for the subject matter of the claims 115 and 120-131 would necessarily include the subject matter encompassed by claims 132-135. The restriction requirement as to claims 132-135 is hereby withdrawn.

2. Claims 104-109 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05 December 2002.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 115 and 120-135 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,885,238 to Stevens et al. (hereinafter 'Stevens') in view of U.S. Patent No. 5,407,434 to Gross.

Stevens teaches the treatment of aneurysms (col. 17, line 9) using two sheaths (broadly shown in Figure 6, the reference generally teaching that any of a number of instruments may be inserted through the sheaths; see col. 17, line 9). Stevens also teaches an inflatable cuff (Fig. 6) to hold a sheath in place, and a hemostasis valve (col. 42, line 39). Stevens also teaches the use of a guidewire (col. 7, line 11).

Stevens, however, does not teach the use of 'gel-like' material. Gross teaches a similar device for sealing body-inserted instruments and uses a gel to seal around the instruments. The gel also seals the passage completely when the instruments are removed. It would have been obvious to one of ordinary skill in the art to modify the reference of Stevens by including the gel-like valve of Gross as a substantially equivalent alternative to the hemostatic valve.

Stevens and Gross, teach all the claimed subject matter except for repeating the insertion and removal of the aneurysm repair apparatus. However, it is commonly necessary for instruments to be inserted and removed from an introducer sheath(s) several times during the course of a surgical procedure. In fact, Stevens teaches in the abstract that the device may be used for aortic valve repair involving removal of the valve and replacement with a prosthetic valve. The removal, of course, would require removal of the tool, and the replacement would require reintroduction of tools. It would have been obvious to one of ordinary skill in the art to repeat the insertion and removal of the aneurysm repair tools, particularly if the repair was not successfully completed on the first attempt.

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Response to Arguments


4. Applicant's arguments with respect to claims 115 and 120-135 have been considered but are moot in view of the new ground(s) of rejection.


Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700


Mark K. Han
Patent Examiner
Art Unit 3763

mkh
May 26, 2005